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IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE SECOND DAY OF MARCH
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE K.C. BHANU

WRIT PETITION NO : 23562 of 2004

Between:

The National Insurance Co. Ltd., rep by its Divisional Manager D.O.IV
II Floor,Twin City Complex, M.J.Market,
Hyderabad 500 001.

..... PETITIONER

AND

1 The Commissioner for Workmen's Compensation & Asst. Commissioner of

Labour-IV, T.Anjaiah Karmika Sankshema Bhavan RTC X Roads,
Hyderabad.

2 Sri Mohd.Abdul Saleem S/o.M.A.Salam,
H.No.21-4-1167, Petla Burj.
Hyderabad.

3 B.Ram Banu S/o.Suresh
H.No.4-25, Opp Bus Stand Patancheru,
Medak Dist.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ, order or direction more particularly one in the nature of writ of certiorari calling for records relating to the order dt 10-8-2004 in WC No.39/2003 and consequential order dt 26-10-2004 passed in Memo in WC No.39/2003 on the file of the Commissioner for Workmen's Compensation and Asst. Commissioner of Labour-IV, at Hyderabad during the enquiry in a claim filed by the 2nd respondent for compensation under the provisions of Workmen's Compensation act and quash the same as illegal and arbitrary and direct the 1st respondent to refer the 2nd respondent to the Medical Board at Hyderabad, to assess the disability and loss of earning capacity of the 2nd respondent.

Counsel for the Petitioner: MR.T.RAMULU

Counsel for the Respondent No.1: GP FOR LABOUR

Counsel for the Respondent No.2: Mr.B.PARAMESWARA RAO

Counsel for the Respondent No.3: None appeared.

The Court made the following :

ORDER:

The National Insurance Company-writ petitioner herein filed an interlocutory application before the Workmen's Compensation Court-1st respondent herein to refer the applicant-2nd respondent herein for medical board for examination. That petition was allowed permitting the Insurance Company to get the applicant examined through its own surgeon to assess the disability, loss of earning capacity to save the delay in the interest of justice. Thereafter, the Insurance Company filed a memo to fix a date convenient to Dr. B.S.Reddy, Orthopedic, to examine the applicant. That memo was dismissed. Challenging the same, the present writ petition is filed.

The right of the Insurance Company to get examined the applicant by the Doctor was already settled by this Court in NEW INDIAN ASSURANCE CO., LTD., v. COMM. FOR WORKMEN'S COMPENSATION ETC., and UNITED INDIA INSURANCE CO., LTD., HYD. V. MOHD. KHAJ RASOOL SAYYED, wherein it was held that it is open for the Insurance Company to take such a step as to adduce rebuttal evidence in the process of enquiry to go into the claim for compensation, which has to be based on the nature of injuries sustained and extent of disability sustained, without which it is not proper for the Court to fix any quantum as such. Hence, the Workmen's Compensation Court rightly allowed the interlocutory application filed by the writ petitioner herein. Since the panel Doctor expressed his inability to examine the applicant before the Hon'ble court due to non-carriage of medical equipment and examined the applicant clinically and radiologically at the clinic of Dr.B.S.Reddy, the petitioner herein filed the said memo praying the 1st respondent to fix any date convenient to Dr.B.S.Reddy to examine the applicant. But, that memo was rejected without assigning any reasons. Even if the certificate is given by Dr.B.S.Reddy, Orthopedic, the same shall not have any evidentiary value, unless the said Doctor is examined in the Workmen's Compensation Court. Therefore, rejecting the impugned memo without assigning any reason is unjustified.

Hence, the writ petition is allowed directing the 1st respondent herein to fix a date convenient to Dr.B.S.Reddy for examination of the applicant within a period of two weeks from the date of receipt of a copy of this order. Thereafter, the applicant shall attend before the clinic of Dr.B.S.Reddy, and thereafter the Doctor shall examine the 2nd respondent herein and issue a certificate. It is needles to observe that the Doctor shall be examined in the 1st respondent Court for the purpose of proving the certificate.

K.C.BHANU, J.

Dated 02-03-2005.

Note: Issue C.C. in one week.

B/O

skmr

..... REGISTRAR

To

1 The Commissioner for Workmen's Compensation & Asst. Commissioner of
Labour-IV, T.Anjaiah Karmika Sankshema Bhavan RTC X Roads,
Hyderabad.
2 2 CCs to G.P. for Labour, High Court Buildings, Hyderabad (OUT).

3 2 CD copies